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ABSTRACT

This study focuses on tort liability and its relationship to extension professionals working with 4-H programs. Tort liability as related to extension professionals consists of ten components: due care, physical defects (inspection of premises), instruction and supervision, first aid and medical treatment, foreseeability, causation, defamation, assault and battery, contributory negligence, and notice of claim (statute of limitations). As public officials, extension professionals are subject to state statutes for tort liability. The Indiana statutes listed were chosen as an example and are indicative of the complexity and serious nature of tort law in other states. Sections of the paper are devoted to legal terms and definitions, legal aspects of 4-H programs, case studies related to 4-H, and insurance for accidents and injury. (Author/IRT)

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UNDERSTANDING TORT LIABILITY AND ITS RELATIONSHIP TO EXTENSION PROFESSIONALS

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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Background

Law has been frequently defined as a binding rule of conduct with the accompanying idea that the rule must be followed or obeyed by the citizen. Law has also been perceived as an instrument or method for settling differences and determining right and wrong where a conflict exists among people.

The primary concern of this paper was focused on the impact of civil law, more specifically, the impact of tort liability upon Extension professionals working with the 4-H program. A more complete understanding of the legal aspects of a public service program for 4-H youth should contribute to the quality of the learning activities being provided. Furthermore, awareness of such information should also enable the Extension professionals to more nearly protect the rights and interests of the youth being served, as well as reasonable self-protection against the heavy burden of liability which is involved.

Introduction

In the United States, a system of laws have been generated primarily to protect the individual rights and guarantee the freedom of religion, speech, press and assembly. Nonetheless, Americans have also long adhered to the notion that an individual should have legal recourse against another who causes injury. One court action that allows such legal recourse is a tort suit.

A tort has been defined as a civil wrong, outside a contract, committed by one person against another. Usually a tort has been

accompanied by a right to recover damages from the person or persons responsible. Whether the wrong was perceived as unintentional, negligent, or inflicted willfully and deliberately may have little bearing. Having a grievance against a person does not give the right to inflict physical punishment. In some cases where tort or wrong is intentional, a person may be entitled to recover additional or punitive damages. Damages awarded for a tort suit can vary greatly in type and amount. There may be replacement value of damanged property, payment for actual medical bills, lost earnings and damages for pain and suffering which are difficult to determine, and punitive damages which may impose both compensation and punishment as a deterrent.

In contrast, receiving personal injury, does not guarantee collection of damages. The courts must first decide the cause of the injury. In making such a determination, five questions are usually applied by the courts: (1) Was there an accident in which a person was injured? (2) Did one owe a care of duty to another? (3) Did one fail to exercise that care of duty? (4) Was the failure to exercise that care of duty the proximate cause of the injury? And, (5) Was the accident foreseeable? If it can be shown that failure to exercise care of duty was the direct cause of the injury, then the defendent may be liable. Relief may or may not involve a monetary award.

Nature of Tort Liability

The nature of tort liability has been described by the National Organization On Legal Problems of Education (NOLPE) as being comprised of several components. The components most closely related to Extension professionals include: (1) Due Care (2) Physical Defects, (3) Instruction and Supervision, (4) First Aid and Medical Treatment, (5) Foreseeability, (6) Causation, (7) Defamation - Slander and Libel, (8) Assault and Battery, (9) Contributory Negligence, and (10) Notice of Claim. Each of the ten components is dealt with in the sections which follow:

1. Due Care

Before liability can be attributed to a defendant, a determination must first be made as to whether the defendant exercised due care. Whether the defendant reasonably foresaw a potential problem, or should have seen the potentiality of a problem, and took the necessary and prudent measures to prevent it, must be established. That is, did the person exercise sufficient foresight in reasoning that an accident might occur and then take appropriate measures in preventing the accident? If a defendant failed to exercise such a standard of due care, and if the failure was the proximate cause of the injury, then the plaintiff may recover for damages.

What constitutes due care and adequate supervision depends largely upon the circumstances surrounding the incident such as: (1) the number and age of the clientele, (2) the activity in which the clientele were engaged, (3) the duration of the supervision,

(4) the ease of providing some alternative means of supervision and (5) the extent to which written and implemented guidelines were utilized.

In the case of minors, the courts have held that the following care of duty was reasonable and prudent: The duty to exercise ordinary care imposed upon a minor child would be properly measured by what a person of the same age, capacity, intelligence and experience would have done under the same or similar circumstances, or the failure to do that which such a person would have done under the same similar circumstances.

Extension professionals and volunteer 4-H leaders, would be expected to exercise a reasonable degree of care in foreseeing the possibility of an accident or injury and in taking the necessary steps to prevent such an accident or injury from occurring. Traditionally, the standard of care that one owes another has been judged as that which a reasonably prudent person would exercise under the same or similar circumstances. Determination of the standard of reasonableness is established by the court where the lack of due care has been charged.

2. Physical Defects

Extension personnel cannot ensure the safety of another from physical defects. However, Extension professionals would be expected to take reasonable precautions in inspecting premises, noting any dangerous conditions, and taking the necessary and appropriate steps to correct the physical defects.

For example, negligence could be shown if an Extension professional allowed a known hazard to exist without appropriate measures being taken to remove or to correct the hazard.

3. Instruction and Supervision

One of the most frequent causes of an accident is the failure of the supervising personnel to instruct properly and to supervise sufficiently. Extension professionals, like public school teachers, are expected to provide proper instruction as well as adequate supervision in order that accidents and injuries can be avoided.

When an Extension professional has been derelict in the instruction and/or the supervision and the dereliction was the proximate cause of an accident, then the injured party may recover in damages. In contrast, failure to instruct and/or to supervise which was not the proximate cause of an accident would carry no liability.

The two determining factors in assessing liability for adequate instruction and/or supervision have usually been: (1) the danger of the instrumentality with which the individual has been working and (2) the person's relative maturity in an unsupervised situation.

4. First Aid and Medical Treatment

The mere plea of "Good Samaritan" will not excuse the Extension professional from liability as a result of giving medical attention when infact the professional should have recognized that the injury was serious and beyond the skills of the Extension Professional to administer the proper treatment. Due care in such circumstances would have been to take reasonably prudent steps to summon necessary help as quickly as possible. Depending upon the circumstances, the

medical attention might have ranged from calling a nurse, a doctor, a first aid expert, or contacting a medical emergency unit. In addition, the parents or the guardians should also have been promptly notified.

5. Foreseeability

Foreseeability has been defined as the matter of being aware of possible danger and taking the appropriate measures to eliminate the danger. To be held liable for negligence, a person must have been able to foresee the danger. Defendants often use the absence of foreseeability as a defense in suits involving accidents.

To limit the opportunity for negligence under foreseeability, Extension professionals have a duty to report any known dangerous defects or hazardous situations to the proper authorities.

6. Causation

Before a court can determine if a defendant is guilty of negligence, the court must first establish the cause of the injury. In assessing the facts, the court has placed great responsibility upon the plaintiff to prove that the defendant's negligence was the proximate cause of the injury.

For a defendant to be liable, the defendant's act must be both the cause in fact and the proximate cause of the plaintiffs misfortune. Therefore, if an independent intervening cause arises between the negligent act and the plaintiffs injury, the court will often not hold the defendant liable for damages.

An effective formula for determining causation has been:

(1) To determine whether the action in question was a cause in fact

of the injury; (2) Would the injury have occurred but for the negligent action? (3) Was there an intervening independent cause? If not, the action was probably the proximate cause. If an intervening cause did exist, the court must determine whether the injury could have been reasonably foreseen even if that specific cause had not occurred or if the intervening cause itself was foreseeable. If the injury was foreseeable, the original action has been considered the proximate cause of the accident.

7. Defamation - Slander and Libel

Defamation has been defined as a communication about a person designed to harm the person's reputation. If written or printed, it is libel; if oral, it is slander. One can recover for damages under tort action for either libel or slander.

Statements to a third person that damage another's reputation may constitute the tort of defamation of character.

Extension professionals have generally not been liable for defamation provided the remarks have related to Extension activities and within the scope of authority. Extension professionals may be held liable for false and malicious statements made outside the Extension professional's scope of authority.

8. Assault and Battery

Assault and Battery are two actions for which one may recover damages. Historically, Assault and Battery have been viewed as being companionable suits, however assault and battery may be separate actions.

Assault has involved an overt act designed to injure or give the appearance of injuring another person. The person to whom the assault was intended must have been placed in a position of peril

or threatened harm. Assault may involve words, actions, or both. In contrast, Battery has involved actual physical contact with another person. A suit for liability under Assault and/or Battery would probably not exist unless there was proof of malice.

9. Contributory Negligence

Negligence has been the most common tort. The concept of negligence presumes a duty of care owed by one person to others, the breach of that duty, and resultant damage or injury. The question of liability would similarly arise where an injury or damage has been caused by an act of omission.

In a negligence suit, one of the defenses has been defined as contributory negligence. Contributory negligence exists when the injured party's action or inaction in part caused the accident, in which case the plaintiff cannot collect from the defendant. The defendant, to prove contributory negligence by the plaintiff, must have shown that: (1) the plaintiff violated his/her duty of due care and acted below the standard of a reasonable person and (2) the plaintiff's lack of care was a proximate cause of the person's accident. One should note that the circumstances have played a crucial role in the determination of negligence.

In contributory negligence suits, the assumption of risk doctrine and the concept of the last clear chance, have been two important factors. The assumption of risk doctrine has been utilized for situations where one voluntarily exposed himself or herself to a danger that the person was fully aware of; in such cases the plaintiff may not recover for injuries sustained as a result of the exposure. For example, when a person attends a hockey game, the person assumes the risk of being "pucked" but does not assume the risk of a boiler explosion, although

either injury would be sustained as a result of the person's exposure at the hockey game. By contrast, the concept of the last clear chance has meant that even if the plaintiff was guilty of contributory negligence, the defendant would still have been liable if the defendant realized or should have realized the plaintiff's peril and had the last clear chance to save the plaintiff, but failed to do so. The last clear chance has also been used as a direct defense; as an example, when the plaintiff had the last clear chance to avoid the accident.

By contrast, the term comparative negligence has been used, but on a more limited basis than contributory negligence. With the concept of comparative negligence, liability for an accident has been assigned by the court according to the degree of fault of both the plaintiff and the defendant. In comparison, under contributory negligence, if the plaintiff was found at fault, in any appreciable or non-trival degree, the plaintiff cannot collect from the defendant.

10. Notice of Claim

Most, if not all, states have statutes that disallow a suit filed after a stated period of time has elapsed following an injury.

The late filing of claims has hinged on two factors: (1) exempting a minor from the restricted period for filing, and (2) determining what constitutes a filing of a claim. Claims are usually filed by the bringing of a lawsuit to toll the statute of limitations. In some instances, notice in the form of a simple letter must be sent, for example to the State of Indiana, within a time period shorter than the statute of limitations.

Burns Indiana Statues

The following selected statutes define in detail the Indiana law as it relates to tort liability of public officials. Extension professionals are duly recognized faculty members of Purdue University (Burns 20-10-20-14) and therefore subject to the statutes of public officials for tort liability. The selected statutes listed in this collection have not been updated for legislation passed after the 1976 Indiana General Assembly adjourned.

22-3-9-1 Liability of employers. -- Any person, firm or corporation while engaged in business, trade or commerce within this state, and employing in such business, trade or commerce five (5) or more persons shall be liable and respond in damages to any person suffering injury while in the employ of such person, firm or corporation, or in case of the death of such employee, then to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and if none, then to such employee's parents; and if none, then to the next of kin dependent upon such employee, where such injury or death resulted in whole or in part from the negligence of such employer or his, its or their agents, servants, employees or officers, or by reason of any defect, mismanagement or insufficiency, due to his, its or their carelessness, negligence, fault or omission of duty.

31-5-10-1 - Minors - Malicious or wilful distruction of property - Liability of parents. -- Respecting any minor under the age of 18 years, the parent or parents with whom such minor is living and having custody of such minor, shall be liable for the actual damages sustained, but not exceeding the sum of $750 plus the court costs of the action, to any person, firm, association, corporation and the state of Indiana and its political sub-division, including but without being limited to cities and towns, for any and all damage proximately caused by the injury to or distruction of any property, real personal or mixed by the intentional or wilful or malicious act or acts of such minor.

34-1-1-2 Action for wrongful death. -- When the death of one is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action therefor against the latter, if the former might have maintained an action had he or she, as the case may be, lived, against the latter for an injury for the same act or omission. When the death of one is caused by the wrongful act or omission of another, the action shall be commenced by the personal representative of the decedent within two (2) years,

and the damages shall be in such an amount as may be determined by the court or jury, including, but not limited to, reasonable medical, hospital, funeral and burial expenses, and lost earnings of such deceased person resulting from said wrongful act or omission. That part of the damages which is recovered for reasonable medical, hospital, funeral, and burial expense shall inure to the exclusive benefit of the decedent's estate for the payment thereof. The remainder of the damages, if any, shall, subject to the provisions of this act, inure to the exclusive benefit of the widow or widower, as the case may be, and to the dependent children, if any, or dependent next of kin, to be distributed in the same manner as the personal property of the deceased. If such decedent depart this life leaving no such widow or widower, or dependent children or dependent next of kin, surviving her or him, the damages inure to the exclusive benefit of the person or persons furnishing necessary and reasonable hospitalization or hospital services in connection with the last illness or injury of the decedent, performing necessary and reasonable medical or surgical services in connection with the last illness or injury of the decedent, to the undertaker for the necessary and reasonable funeral and burial expenses, and to the personal representative, as such, for the necessary and reasonable costs and expenses of administering the estate and prosecuting or compromising the action, including a reasonable attorney's fee, and in case of a death under such circumstances and when such decedent leaves no such widow, widower, or dependent children, or dependent next of kin, surviving, him or her, the measure of damages to be recovered shall be the total of the necessary and reasonable value of such hospitalization or hospital service, medical and surgical services, such funeral expenses, and such costs and expenses of administration, including attorney fees.

34-1-1-8 Action for Injury or Death of Child -- The father and mother jointly, or either of them by naming the other parent as a co-dependant to answer as to his or her interest or in case of divorce or dissolution of marriage the person to whom custody of the child was awarded, may maintain an action for the injury or death of a child; and a guardian may maintain such action for the injury or death of his ward; in case of death of the person to whom custody of the child was awarded, a guardian shall be appointed to maintain an action for the injury or death of his ward. But when the action is brought by the guardian for an injury to his ward, the damages shall inure to the benefit of his ward.

34-1-2-2 Limitation of Actions - The following actions shall be commenced within the periods herein prescribed after the cause of action has accrued, and not afterwards. For injuries to person or character, for injuries to personal property, and for a forfeiture of penalty given by statute, within two (2) years: Provided, that actions on account of injuries to personal property which occurred prior to the effective date of this amendatory act (March 7, 1951) shall be commenced within two (2) years from the effective date of this amendatory act.

34-1-5-1 Libel or Slander - Defamatory matter - In an action for libel and slander it shall be sufficient to state generally that the defamatory matter published or spoken was of the plaintiff; and if the allegation be denied, the plaintiff must prove on the trial the facts, showing that the defamatory matter was published or spoken of him.

34-4-13-1 Libel or Slander - Proof of justification - The rule requiring that an answer of justification in cases of libel and slander shall be proved beyond a reasonable doubt, is hereby abrogated; and after the taking effect of this act, the proof of such answer shall be controlled by the rule now applying to the proof of issues in other civil cases.

34-4-16.5-2 Definitions - as used in this chapter (34-4-16.5-1—34-4-16.5-18)

(1) "employee" and "public employee" means a person presently or formerly acting on behalf of a governmental entity, whether temporarily or permanently or with or without compensation, including members of boards, committees, commissions, authorities and other instrumentalities of governmental entities, but does not include an independent contractor or an agent or employee of an independent contractor:

(2) "governmental entity" means the state or a political subdivision of the state;

(3) "incompetent" means a person who is under the age of eighteen (18) years or is incapable by reason of insanity, mental illness, or other incapacity of either managing his property or caring for himself or both;

(4) "loss" means injury to or death of a person, or damage to property;

(5) "political subdivision" means a:

(i) county,
(ii) township,
(iii) city,
(iv) town,
(v) separate municipal corporation
(vi) special taxing district,
(vii) state college or university
(viii) city or county hospital,
(ix) school corporation, or
(x) board or commission of one of the entities listed in clauses (i) through (ix), inclusive, of this subdivision;

(6) "state" means Indiana and its state agencies; and

(7) "state agency" means a board, commission, department, division, bureau, committee, authority, military body, or other instrumentality of the state, but does not include a political subdivision.

34-4-16.5-3. Immunity from liability. -- A governmental entity or an employee acting within the scope of his employment is not liable if a loss results from:

(1) the natural condition of unimproved property;

(2) the condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose which is not foreseeable;

(3) the temporary condition of a public thoroughfare which results from weather;

(4) the condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area;

(5) the initiation of a judicial or administrative proceeding;

(6) the performance of a discretionary function;

(7) the adoption and enforcement of or failure to adopt or enforce a law, including rules and regulations, unless the act of enforcement constitutes false arrest or false imprisonment;

(8) an act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid, if the employee would not have been liable had the statute been valid;

(9) the act or omission of someone other than the governmental entity employee;

(10) the issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law;

(11) failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety;

(12) entry upon any property where the entry is expressly or impliedly authorized by law:

(13) misrepresentation if unintentional; or

(14) theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

34-4-16.5-4. Limitation on amount of liability. -- The aggregate liability of all governmental entities does not exceed three hundred thousand dollars ($300,000) for injury to or death of one (1) person in any one (1) occurrence and does not exceed five million dollars ($5,000,000) for injury to or death of all persons in that occurrence. A governmental entity is not liable for punitive damages.

34-4-16.5-5. Immunity of public employees. - (a) A judgment rendered with respect to or a settlement made by a governmental entity bars an action by the claimant against an employee whose conduct gave rise to the claim resulting in that judgment or settlement.

(b) Subject to the provisions of IC 34-4-16.5-4, IC 34-4-16.5-13, IC 34-4-16.5-14, and IC 34-4-16.5-15, the governmental entity shall pay any judgment, compromise, or settlement of a claim or suit against an employee when the act or omission causing the loss is within the scope of his employment, regardless of whether the employee can or cannot be held personally liable for the loss and when the governor, in the case of a claim or suit against a state employee, or the governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision, determines that paying the judgment, compromise, or settlement is in the best interest of the governmental entity.

(c) The governmental entity shall pay all costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of his employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(d) Nothing contained in this chapter (34-4-16.5-1—34-4-16.5-18) shall be construed as a waiver of the eleventh amendment to the Constitution of the United States, as consent by the state of Indiana or its employees to be sued in any federal court or as consent to be sued in any state court beyond the boundaries of the state of Indiana. (IC 34-4-16.5-13 refers to a settlement or compromise by the governor, IC 34-4-16.5-14 refers to the duties of the Indiana Attorney General, IC 34-4-16.5-15 refers to a settlement or compromise by political subdivisions)

34-4-16.5-16. Enforcement of judgment against governmental entity. A court which has rendered a judgment against a governmental entity may order that governmental entity to:

(1) appropriate funds for the payment of the judgment if funds are available for that purpose; or

(2) levy and collect a tax to pay the judgment if there are insufficient funds available for that purpose.

34-4-16.5-18. Liability insurance. -- A governmental entity may purchase insurance to cover the liability of itself or its employees. Any liability insurance so purchased shall be purchased by invitation to and negotiation with providers of insurance and may be purchased with other types of insurance.

If such a policy is purchased, the terms of the policy govern the rights and obligations of the governmental entity and the insurer with respect to the investigation, settlement, and defense of claims or suits brought against the governmental entity or its employees covered by the policy. However, the insurer may not enter into a settlement for an amount which exceeds the insurance coverage without the approval of:

(1) the governor if the claim or suit is against the state; or

(2) the mayor if the claim or suit is against a city, or the governing body of any other political subdivision if the claim or suit is against such political subdivision.

34-4-16.7-1. Liability assumed by governmental entity. -- If a present or former public employee, as defined in IC 34-4-16.5-2, is or could be subject to personal civil liability for a loss occurring because of a noncriminal act or omission within the scope of his employment which violates the civil rights laws of the United States, the governmental entity, as defined in IC 34-4-16.5-2, shall subject to the provisions of IC 34-4-16.5-4, IC 34-4-16.5-13, IC 34-4-16.5-14 and IC 34-4-16.5-15, pay any judgment compromise, or settlement of the claim or suit when the governor, in the case of a claim or suit against a state employee, or the governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision determines that paying the judgment, compromise, or settlement is in the best interest of the governmental entity. The governmental entity shall also pay all costs and fees incurred by or on behalf of a public employee in defense of the claim or suit.

(IC 34-4-16.5-13 refers to a Settlement or compromise by the Governor, IC 34-4-16.5-14 refers to the Duties of the Indiana Attorney General, IC 34-4-16.5-15 refers to a settlement or compromise by political subdivisions.)

35-43-1-2. Mischief (Effective July 1, 1977). -- A person who:

(1) recklessly, knowingly, or intentionally damages property of another person without his consent; or

(2) knowingly or intentionally causes another to suffer pecuniary loss by deception or by an expression of intention to injure another person or to damage the property or to impair the rights of another person, under circumstances not amounting to theft; commits a Class B. misdemeanor. However, the offense is a Class A misdemeanor if the pecuniary loss is at least two hundred fifty dollars ($250) but less than two thousand five hundred dollars ($2,500), and a Class D felony if (i) the pecuniary loss is at least two thousand five hundred dollars ($2,500), (ii) the damage causes a substantial interruption or impairment of utility service rendered to the public, or (iii) the damage is to a public record.

35-43-2-2. Trespass (Effective July 1, 1977). -- (a) A person who:

(1) not having a contractual interest in the property of another person after having been denied entry by the other person or his agent;

(2) not having a contractual interest in the property, knowingly or intentionally refuses to leave the property of another person after having been asked to leave by the other person or his agent;

(3) accompanies another person in a vehicle, with knowledge that the other person knowingly or intentionally is exerting unauthorized control over the vehicle; or

(4) otherwise knowingly or intentionally interferes with the possession or use of the property of another person without his consent and under circumstances not amounting to theft; commits a Class A misdemeanor.

(b) A person has been denied entry within the meaning of this section when he has been denied entry by means of:

(1) personal communication, oral or written; or

(2) posting or exhibiting a notice at the main entrance and in a manner that is either prescribed by law or likely to come to the attention of the public.

35-44-1-2. Official misconduct (Effective July 1, 1977). -- A public servant who:

(1) knowingly or intentionally performs an act that he is forbidden by law to perform;

(2) performs an act in excess of his lawful authority, with intent to obtain any property for himself;

(3) knowingly or intentionally solicits, accepts, or agrees to accept from his appointee or employee any property other than what he is authorized by law to accept as a condition of continued employment; or

(4) knowingly or intentionally speculates, wagers, acquires, or divests himself of a pecuniary interest in any property transaction, or enterprise or aids another person to do so, based on information obtained by virtue of his office that official action commits a Class A misdemeanor.

Definition of Legal Terms

The following selected terms as related to Extension professionals and tort liability were primarily compiled from Black's Law Dictionary; a recognized text, used in the legal profession.

Abridgment - Condensation of written language, to shorten a declaration or count by taking away or severing some of the substance.

Abrogate - To repeal, or destroy an order or rule issued by a subordinate authority; to repeal a former law by legislative act or by usage.

Act of God - An act occasioned exclusively by violence of nature without the interference of any human agency. An act, event, happening, or occurrence, a disaster and effect due to natural causes and inevitable accident, without interference or aid from man and which results from natural causes and is in no sense attributed to human agency.

Allegation - The assertation, declaration, or statement of a party to an action, made in a pleading, setting out what he expects to prove.

Allege - To state, recite, assert, or charge; to make an allegation.

Appellant - The party who takes an appeal from one court or jurisdiction to another.

Arbitrary and Capricious - Done at pleasure, without adequate determining principle, nonrational; not done or acting according to reason or judgment; depending on the will alone. Without fair, solid and substantial cause based upon the law.

Attorney - A term to denote an agent or one who is appointed and authorized to act in place or instead of another.

Attractive Nuisance Doctrine - Maintaining on one's premises a condition, instrumentality, machine or other agency, which is dangerous to young children because of their inability to appreciate peril and may reasonably be expected to attract them to the premises, owes duty to exercise reasonable care to protect them against dangers of such attraction.

Civil Suit - A suit for the remedy of a private wrong, the test being whether the law is penal in the strict and primary sense, and whether the wrong is to the public or to the individual.

Contempt of Court - Any act which is calculated to embarrass, hinder, or obstruct court in administration of justice, or which is calculated to lesson its authority or its dignity.

DeFacto - Infact; actually; indeed; in reality.

Defendant - The person defending or denying.

Defense - That which is offered and alleged by the party proceeded against, as a reason why the plaintiff should not recover or establish what he seeks.

Due Process of Law - Implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law. The essential elements are (1) notice and opportunity to be heard, (2) opportunity to defend in orderly proceeding adapted to nature of care, (3) the guarantee of due process requires that every man have protection of day in court and benefit of general law.

Employee - One who works for an employer. Generally, when person for who services are performed has right to control and direct individual who performs services not only as to result to be accomplished by work but also as to details and means by which result is accomplished, individual subject to direction is an employee.

Employer - The correlative of employee.

Equity - Denotes equal and impartial justice as between two persons whose rights or claims are in conflict.

Fraudulent Representation - A false statement as to material fact, made with intent that another rely thereon, which is believed by other party and on which he relies and by which he is induced to act and does act to his injury, and statement is fraudulent if speaker knows statement to be false or if it is made with utter disregard of its truth or falsity.

Injunction - A prohibitive writ issued by a court, forbidding the defendant to do some act, or to permit his servants or agents to do some act which he is threatening or attempting to commit, such act being unjust, inequitable or injurious to the plaintiff, and not such as can be adequately redressed by an action at law.

In loco parentis - In the place of a parent; instead of a parent; charged, factitiously, with a parents rights, duties, responsibilities.

Insubordination - Refusal to obey some order which a superior officer is entitled to give and have obeyed.

Involuntary Servitude - The condition of who is compelled by force, coercion, or imprisonment, and against his will, to labor for another whether he is paid or not.

Law - A rule or method according to which actions co-exist or follow each other. That which must be obeyed and followed by citizens, subject to sanctions or legal consequences.

Lawyer - A term to describe a person learned in and licensed to practice law.

Negligence - The omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do.

Liability - A broad legal term including almost every character of hazard or responsibility, absolute, contingent or likely.

Nepotism - Bestowal of patronage by public officers in appointing others to positions by reason of blood or marital relationship to appointing authority.

Nuisance - That class of wrongs that arise from the unreasonable unwarrantable, or unlawful use by a person of his own property, either real or personal, or from his own improper, indecent, or unlawful personal conduct, working an obstruction of or injury to the right of another or of the public, and producing such material annoyance, inconvenience, discomfort, or hurt, that the law will presume resulting damage.

Personal Tort - One involving or consisting in an injury to the person or to the reputation or feelings, as distinguished from an injury or damage to real or personal property.

Per curiam - By the court. A phrase used in the reports to distinguish an opinion of the whole court from an opinion written by any one judge.

Plaintiff - A person who brings an action; the party who complains or sues in a personal action and is so named on the record.

Plenary - Full, entire, complete, absolute, perfect, unqualified.

Prize - Anything offered as a reward of contest; a reward offered to the person who, among several persons or among the public at large, shall first (or best) perform a certain undertaking or accomplish certain conditions.

Prima Facie - At first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure, presumably; a fact presumed to be true unless disproved by some evidence

Provocation - The act of inciting another to do a particular deed. That which arouses, moves, calls forth, causes or occasions.

Proximate cause - That which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.

Punitive Damages - Punishment such as can be estimated by money as compensation which may be recovered in the courts by any person who has suffered loss through the unlawful act or omission or negligence of another.

Reasonable - Just; proper. Ordinary or usual. Fit and appropriate to the end in view.

Redress - The receiving satisfaction for an injury sustained.

Res ipsa loquitur - The thing speaks for itself; that the accident was one which ordinarily does not happen in absence of negligence.

Respondent Superior - A doctrine based on the principles of agency and derived from the ancient master - servant laws, means that a master is liable in certain cases for the wrongful acts of his servant. It means the Cooperative Extension Service may be charged with liability for the wrongful acts of its employees.

Restraining Order - An order in the nature of an injunction forbidding the defendant to do the threatened act until a hearing on the application can be had. The order may be temporary or permanent.

Thin Skin Doctrine - If one slightly injures a person who has a susceptibility to greater injuries, the defendant is liable for the greater degree of injury, even if the person did not know of the plaintiffs greater susceptibility.

Tort - A private or civil wrong or injury. Three elements of every tort action are: (1) Existence of legal duty from defendent to plaintiff, (2) breach of duty, (3) damage as proximate result.
A legal wrong committed upon the person or property independent of contract. It may be either (1) a direct invasion of some legal right of the individual, (2) the infraction of some public duty by which special damage accures to the individual, (3) the violation of some private obligation by which like damage accures to the individual.

Trespass - Doing of unlawful act or of lawful act in unlawful manner to injury of another's person or property.

Unavoidable Accident - An accident which could not be prevented by the exercise of ordinary care and prudence. A casualty which occurs without negligence of either party and when all means which common prudence suggests have been used to prevent it.

Underwriter - The person who insures another, as in a fire or life policy.

Unjust - Contrary to right and justice, or to the enjoyment of his rights by another, or to the standards of conduct furnished by the laws.

Unprecedented - Having no precedent or example, novel, new, unexampled. Unusual and extraordinary; affording no reasonable warning or expectation of recurrence.

Unreasonable - Irrational; foolish; unwise; absurd; silly; preposterous; senseless; stupid.

Wanton - Reckless, heedless, malicious, characterized by extreme recklessness, foolhardiness, recklessly disregardful of the rights or safety of others or of consequences.

Wrong - A violation of the legal rights of another; an invasion of right to the damage of the parties who suffer it, especially a tort.

Legal Aspects of the 4-H Program
Questions and Answers

The following selected questions and answers on the legal aspects of the 4-H program were assembled from several printed reports obtained from the National 4-H Council, V. Joseph McAuliffe, Director, Educational Programs and Services. The reports were compiled in March 1976 during and following the "Legal Aspects of 4-H and Other Organized Youth Programs and Activities Workshop," W.W. Eure, Course Coordinator, National 4-H Council, 7100 Connecticut Ave., Washington D.C., 20015.

1. Who is ultimately responsible for the actions of an adult 4-H volunteer leader?

Each person is responsible for his or her own actions; however, the State Director of the Cooperative Extension Service is ultimately responsible for the success or failure of the Extension program. The immediate supervisor — the Extension 4-H — the Youth Agent — has first responsibility.

2. Can volunteer leaders sue for being refused leadership responsibility?

Anyone can sue for a violation of personal or property rights. It is questionable that anyone has a "right" to be a volunteer leader for a publicly supported program like 4-H. It appears that the selection of leaders is the prerogative of Extension Service employees.

3. In a public service organization like 4-H, who has the legal authority to determine who may be a member? What about age limits?

The State Director of Extension, assisted by his employed staff, may set membership requirements and age limits so long as they are in compliance with state and national laws.

4. What is the liability of agents if their recommendations cause failure of a member's project?

The restatement of the law of torts, section 522, states: "One who in the course of his business of profession supplies information for the guidance of others in their business transactions is subject to liability for harm caused to them by their reliance upon the information if (a) he fails to exercise that care and competence

in obtaining and communicating the information which its recipient is justified in expecting, and (b) the harm is suffered by the person or one of the class of persons for whose guidance the information was supplied."[1]

5. What is legal authority of 4-H agents or State Director of Extension versus volunteers or advisory groups?

The State Director of Extension has legal authority to administer the Cooperative Extension program in a given state. Volunteers and advisory groups have no legal authority other than that held by any other citizen.

6. What are the legal problems when members of youth groups use materials supplied by other organizations, relies upon information and is injured?

Person supplying materials or information is liable. However, educational materials from sources other than Extension but distributed by Extension employee could make the Extension employee liable. Putting Cooperative Extension or 4-H stamp on such materials has been held to constitute an endorsement.

7. What are parents' rights to dictate rules, approaches related to religion, moral values, etc.?

It is the responsibility of the Cooperative Extension Service to establish rules and approve program content. Parents have a right to object and suggest changes but not to dictate. Since 4-H traditionally has been family and community centered, and with Extension's long established policy of helping to meet the needs of the people with whom it works, it is desirable for local agents to work with the people through some type of advisory group in establishing rules of conduct and moral values.

8. What are the responsibilities of youth leaders with regard to the use of drugs, liquor, sexual conduct of members?

First of all, Extension employees in charge have the responsibility for establishing rules governing the conduct of members engaged in 4-H programs and activities. They may use advisory group suggestions and peer group advice but the responsibility rests with agents. The rules should be written and explained to both parents and participants and should include action which will be taken if rules are violated. Parents and members should sign a form agreeing to abide by the rules. For older members a peer group committee may be appointed to recommend punishment for violations.

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[1] Memo. Elmer Mostow, Office Gen. Counsel to ESUSDA, Sept. 1964.

9. Can I send a 4-H'er home for violation of the rules?

Yes, provided member and parent signed the form agreeing to abide by the rules and if rules and punishment were discussed with the member before the activity and you present the defendant with evidence that the rule was violated and give him a chance to defend himself.

10. How does 4-H relate to religious groups and how is it affected by separation of church and state?

Extension's 4-H - Youth program has no organic relationship to any church or religious body. As a publicly financed educational program, it must be available to persons of all religious persuasions.

11. What is "due process" in handling cheating on awards?

Due process of law is a concept of justice guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States. It includes protection against self-incrimination, the right to legal counsel, the right to have formal charges placed against one, the right not to be detained unnecessarily, and the right to bail under certain conditions. These rights are automatically available to adults but only partially to youths. The 1967 landmark case re Gault, 387 U.S. 61 Supreme Court decision, entitled children to due process in juvenile courts. Another case, Dixon vs. Alabama State Board of Education, is more closely related to a 4-H situation. Dixon was expelled from school for participation in a civil rights demonstration. The U.S. Court of Appeals overturned a lower court decision, pointing out that the notice (1) should have contained a statement of the specific charges and grounds which if proven would justify expulsion, (2) the nature of the hearing should vary according to circumstances, (3) did not imply that a full dress judicial hearing was required, (4) student should be given names of witnesses against him, and (5) an oral or written report on the facts of witness testimony.[2]

12. What precaution should be taken with adult leaders?

Help them realize their responsibility; use a job description; and make sure information given the leader is correct.

13. What are some problems with the privacy legislation in regard to school lists, personnel records?

The student can look at own personnel file and everything in it. Written consent is required for disclosure of a student's records to a third party. Some 4-H agents have had schools refuse to give names of students who watch TV's "Mulligan Stew" because of the privacy

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[2]Center for Youth Development & Research Quarterly Focus, University of Minnesota, Spring/Summer 1976

act. The solution is to have parents or students sign a waiver giving permission to disclose the information.

14. What are the legal restrictions on the use of the 4-H name and emblem?

See Cooperative Extension Service Administrative Handbook. Chapter II, "Use of 4-H Name and Emblem." It is in all state CES offices and should be in all county offices. The name 4-H and emblem cannot be used for purposes of advertising a commercial product.

15. What action should a youth worker take when he has knowledge of child abuse or neglect?

The known facts should be reported to local welfare departments which will send out a case worker to investigate. Most county and city welfare departments have sections known as "protective services for neglected children." In working through such a public agency, it is possible for the person reporting to remain anonymous. The youth worker should not become personally involved.

16. Must parental permission be given for medical treatment of a child in 4-H camp or other events away from home?

The opinion expressed was that a parent signing a card saying "I give permission for my child to receive necessary medical care while at camp," was not adequate to cover all situations. It might cover minor ailments but did the parent intend to give permission to amputate a leg or perform an abortion. <u>You cannot in advance give up your torts rights.</u> If something of a serious nature occurs the doctor should call the parents for permission.

Suppose the doctor doesn't act and then the parent comes back to you and says, "I gave you this form that signifies to me that if Johnny needs medical help you tell the doctor to go ahead." If the responsible person told the doctor to go ahead then that person may be off the hook - but the doctor may not be.

To cover yourself you should tell the doctor in writing to prevent him from saying you never told me.

Keep in mind that hospitals must get specific consent not general consent.

17. What if a youngster shows up at a State Fair under the influence of alcohol which is against our rules?

Opinion - One would assume your rules provide punishment. A person has a right to appear before somebody - this should be followed through and his rights put down in writing. He should

have an opportunity to defend himself, appear before whatever authority there is and have evidence presented in his behalf, and cross-examine witnesses in his behalf. You must adhere to due process. If taken to court he has the right to have an attorney.

You can avoid a lot of trouble by making sure people understand the rules ahead of time rather than just say here are the rules, read them. They should also understand the consequences that they must face if rules are violated.

If you say these are the rules and the child understands them and you go through due process to determine his guilt and send him home according to the rules, there does not seem to be anything that the parents can hold you for.

18. If a member breaks a rule of eligibility for membership in a club could he be dismissed?

Rules for membership must not be discriminatory with regard to race, sex, color, religion, etc. Extension professionals have an obligation to make rules that are just and reasonable.

19. If you have a group using dormitories where you cannot have alcoholic beverages can you give your permission to have alcoholic beverages?

While you can control conduct within your group, you cannot contravene rules set by those renting you the facilities.

20. When a member must be sent home for violation of the rules should you give the parents a complete written report of what happened and what action was taken?

Yes, definitely.

21. If a child would like to join 4-H, is it the parent who must make the decision whether he can or not?

Yes.

22. If you cover in your rules the right to inspect for anything forbidden on the premises and reserve the right to seize and destroy any illicit materials that are in camp, can you usually inspect personal belongings?

Yes, usually you can.

References:

The Quarterly Focus, Winter, 1975, Center for Youth Development and Research, 325 Haecker Hall, University of Minnesota gives an

excellent discussion of the Rights of Youth. Other recommended readings on this subject are:

Legal Rights of Children, National Council of Juvenile Court Judges.

Children's Rights, Praeger Publishers, N.Y.

The Rights of Children, Harvard Educational Review, Series No. 9.

The Rights of Students, Alan Levine, Cary and Divoky - Civil Liberties Union Handbook.

Youth's Rights to be Regarded as A Person, Center for Youth Development and Research, University of Minnesota - Seminar Series 9, 904 August, 1976.

Case Studies and Situations Related to 4-H

Adopted from the presentation by Mr. Eugene E. Reeves, JD, Director of Law Extension, University of Missouri at the Workshop on"Legal Aspects of 4-H and Other Organized Youth Programs and Activities" (TS-40) March 15-19, 1976, National 4-H Center, Washington, D.C.

Most of these cases are suits against school districts for lack of proper supervision of children. The situations seem to be analagous to the problems which Cooperative Extension employees and volunteers face in supervising events such as 4-H camps, fairs, swimming, hiking, using power tools, and the many circumstances involving work with young people.

Here are some examples of exposure to liability for failure to properly supervise children.

New Jersey Case: This was an action by a nine year old pupil against three defendants, a Board of Education, the school principal and a 13 year old student, for serious injuries suffered a little after 8:00 a.m., as the student who was injured arrived on the school grounds on his bicycle. He was struck in the eye by a paper clip shot from an elastic band by the defendant older boy. The classes began at 8:30 a.m. The injury occurred at a pick-up area where students were assembling to be bussed to other schools. The plaintiff's complaint charged, among other things, that the principal had negligently failed to exercise supervision and the defendant Board of Education had actively and affirmatively failed to provide safeguards for the arriving children. All three defendants were held liable. The court held that school personnel had the duty to exercise reasonable supervisory care for the safety of the students entrusted to them. The court found that the record of the trial supported a finding of negligence against the principal (against him personally - not just the School Board) notwithstanding the fact that the principal each morning walked about the school premises either on the inside or outside prior to the start of classes to observe the conduct of the gathering pupils. Liability was predicated upon the fact that the principal had not announced any rules with respect to the congregation of students and their conduct prior to entry into the classrooms -- had assigned none of the teachers or other school personnel to assist him in supervising the students -- but had assumed sole responsibility himself and had failed to take any measures towards overseeing the presence and activities of the pupils. The court rejected the defense that even if lack of due supervision was assumed, the defendant student's deliberate conduct of shooting the paper clip rather than the principal's negligence was the sole cause of the injury. The court took the position that the jury could find that conduct of the type engaged in by the defendant student could reasonably have been anticipated and guarded against and that the principal's failure to do so was a substantial factor in the occurence.

Another Case - Out of California - This was an action against a school district and a shop-training teacher by a 15 year old boy who injured his hand as a result of an explosion of a toy cannon made by him in his high school class. He took the cannon home, fired it and it blew up hurting his hand. The California appellate court held that an instruction to a jury might properly charge negligence against the shop teacher by asserting that the teacher knew the cannons were being fired by students and that he failed to warn the students about possible injury.

Another Case from New York - An 11-year old girl pupil in the seventh grade at a school under control of the state, suffered a dislocation of a vertebra in her neck while performing a "head stand" exercise in a physical education class. Failure of the gym teacher who was in an adjoining room at the time of the accident, to instruct the student as to the customary method of performing the exercise was held to be the cause of the injury.

Another Case - Liability may arise for injuries sustained by a student on the school premises as a result of being struck by a motor vehicle operated by a third party where the school officials were negligent in failing to exercise proper supervision of the students. A high school girl was running with other classmates from a school gymnasium to an athletic field during a gym class. She was struck by a garbage truck owned and operated by a third party, which was traveling about 25 miles per hour on a passageway on the school grounds. It came around a blind corner without warning. The California court held that the school officials had the responsibility first of erecting warning signs to warn the garbage truck drivers about the hazard to children, and the school officials had the further duty to protect the children by having monitors posted when they ran across the danger area.

A New York Case - Inadequate supervision by school officials was also found when plaintif, an 11-year old boy, was injured while returning to the school building after the noon recess. He was singled out and pelted by some 20-30 boys engaged in an iceball throwing contest.

State of Washington Case - A high school had a club which was sponsored by an international organization. Student membership was selectively based upon scholastic and leadership ability. Hazing was connected with initiation into this school supervised extra-curricular activity - and a child was injured. Lack of appropriate supervision and regulations was the basis for the school district's liability.

In Another Case from Washington State - A student had voluntarily joined the school's wrestling squad. He suffered permanent paralysis of all voluntary functions below the level of his neck. The school district was exposed to liability for providing an inattentive referee for the wrestling match where the student was injured.

Insurance for Accident and/or Injury

Adopted from the presentation by Mr. Eugene E. Reeves, JD, Director of Law Extension, University of Missouri at the Workshop on "Legal Aspects of 4-H and Other Organized Youth Programs and Activities" (TS-40) March 15-19, 1976, National 4-H Center, Washington, D.C.

Practically everyone now recognizes and is well aware of and concerned about exposure to financial ruin from accident or injury caused by a momentary lapse of attention. Since the events are so relatively infrequent and catastropic in their impact on a person's financial well-being when they do occur we have as you well know the insurance industry to provide protection to you within certain well-defined areas of your activities.

What I'm about to do today is to talk to you about the kinds of insurance policies that you probably own right now and the kinds which you probably don't own. I'm then going to mention a number of different kinds of fact situations with which you are probably familiar and which involve some degree of risk of a claim being made against you. Then we'll try to look at these facts situations to see if the insurance policies which you now have protect you, and if not, whether the institution for whom you work might be willing to buy protection, and if the institution is not willing to buy protection, whether you should assume the financial risk yourself.

Before looking at fact situations, let's see if we can come up with some rules of thumb which will help us to understand the intended coverage of particular kinds of policies: Let's first take a look at high risk coverage. Here, we find policies insuring automobiles, busses and trucks. There are two basic kinds of liability insurance written on vehicles--personal and commercial. Generally speaking, personal vehicle insurance follows the vehicle. One very important exception is what is called "non-ownership coverage." Commercial coverage may apply to all "owned" or perhaps "owned" and "non-owned" vehicles operated by employees while in the course of their employment.

Let's first talk about some rather complex coverage problems under your family auto policy. First, we have the borrowed car problems. The first one occurs when another person borrows your car and the second one occurs when you borrow or drive another person's car. The policy provisions governing these two situations usually provide: 1. That if someone else is driving your car they must drive it with your permission for your policy to cover them and accordingly, if you are driving somebody else's car you must obtain their permission for that person's policy to cover you. 2. Your policy provides you a form of extra protection when you are driving

somebody else's car. This is sometimes referred to as "non-ownership" coverage or a "drive-other-cars" endorsement. It provides you with excess coverage if you reasonably believe that you are operating that vehicle with the owner's permission and if that car is not regularly in your custody. Under non-ownership coverage the scope of permission may be very limited and when you are beyond the boundary of permissive use, you have no coverage. For instance, when driving a borrowed car you may not have the authority to extend coverage to a second permittee unless the owner gave you that authority. Also, suppose you are given permission to drive around the block but instead drive to St. Louis. Or suppose you're driving a University car on business and drop into the cleaners to pick up your cleaning and there is an accident in the parking lot. Coverage ceases when you go beyond the scope of permission given by the owner.

There is another aspect of risk to the borrowing problem. Property in your custody is excluded, that is, when you are sued by the owner for damaging property that you have borrowed, you may have no insurance protection.

Let's suppose that you borrow a school bus from the local school district and negligently damage it in an accident. As a bailee you have the responsibility to take reasonable care of the vehicle while in your possession. Accidents resulting from your negligence may well result in your financial responsibility for the difference between the value of the vehicle before and after the accident. Most automobile liability policies don't protect you when you damage the property you have borrowed.

The next coverage question arises when you are driving a school automobile for business or professional (not private) purposes. Your family auto policy provides "non-owned auto" coverage which will cover you or occupational pursuits, but it usually won't cover you while you are driving a bus or any vehicle other than a private passenger automobile This means that if you in your occupation are driving a truck full of kids or a bus load of kids you probably don't have any insurance protection under your own family auto policy. As a matter of fact, you probably have no coverage under this policy when you drive a pick up truck that you don't own while in the course of your employment. Remember that I'm talking about your non-owned automobile coverage while you are driving somebody else's pick up truck or bus, his policy will probably cover you. But you usually can't feel secure about that other person's coverage.

While we're on the subject of non-owned automobile coverage, some institutions provide their employees with non-ownership coverage while acting within the scope of employment. The University of Missouri did provide such coverage until July 1 of the fiscal year but does not now do so. Therefore, the University does not provide me liability insurance when I am using my private automobile

in the scope of my employment for the University. I am provided coverage when I drive a University vehicle but that coverage only protects me while I am operating that vehicle within the confines of the University's Policy and Procedures Manual and if I move beyond the restrictions of the Policy and Procedures Manual, I will not be a permissive driver and the University policy won't apply. For example, a University employee recently drove into the parking lot of a cleaners to pick up his cleaning and the University car he was driving was involved in a collision on the parking lot of the cleaners. The University and its insurance company took the position that they fell outside the scope of permissive use. It should be pointed out that the non-owned automobile clause of that individual's own policy would probably protect him since he was operating a vehicle for personal purposes.

Here's another word of caution. Carrying passengers for compensation will usually destroy your liability coverage. Cost sharing is not the kind of commercial usage intended to be excluded. Stated affirmatively, cost sharing is okay.

Let's now look at a frequently occurring situation which threatens insurance protection. Assume that your employer does not provide non-ownership coverage and suppose that you are relying on your family auto policy to provide you coverage while you're driving your car within the scope of your employment. Now let's further suppose that you and two other fellow employees, A and B, are driving to a meeting. You let A drive your car on the trip. If A has a wreck, A is usually not protected under your policy whether the claim is made by B or is made by you. An "omnibus clause driver," that is, a permissive driver is excluded and not protected against claims by a fellow employee injured in the course of employment and there is normally a special exclusion preventing you from asserting a claim against the permissive driver. The message is to avoid substituting drivers on a business trip.

Another usual clause in your family auto policy will exclude protection for you when you're being sued by your own employee for some negligent injury to that employee arising out of the use of your vehicle. Also, any permissive driver would not be protected under your vehicle policy should your employee sue that driver for negligence.

Now summarizing the situation under your family auto policy. When you are engaged in personal activities you and the person you allow to drive your car are almost always fully protected. On the other hand, when you allow somebody else to drive your car while its being used for business purposes, you'll find some strong limitations on coverage for others under your family auto policy. The idea is that you should buy business coverage for the operation of a large number of different vehicles in business.

Let's next consider premises liability. We have a special body of law governing the responsibility of owners and occupiers of land to those persons who come onto the premises. With some exceptions, a landowner owes relatively little duty to a "trespasser", a duty of reasonable care to warn about or make safe dangerous conditions which he knows about to protect the "social visitor," reasonable care to warn about or make safe dangerous conditions the landowner knows about or should discover to protect the "business visitor." There is also a duty to make the premises safe against potential trespassing children. In some states the children must be attracted onto the land by the dangerous device and in other states that is not the requirement.

Personal activities conducted on your land are usually covered by your homeowner's policy, but business activities conducted on your land must be covered by business general liability insurance coverage specifically known as "owners, landlords and tenants" coverage. Stores, hotels, apartment houses, etc., are covered by this kind of business policy. It thus becomes readily apparent that conducting commercial activity on a farm or on private premises requires a special policy. As you might suspect your homeowner's policy, with some minor exceptions, excludes protection for business and professional activities. Before any kind of temporary commercial activity, such as a bake sale, is conducted on someone's premises, careful attention should be given to insurance protection.

Your homeowner's policy not only protects you for negligence arising out of use of your premises, but also protects you away from the premises for your personal negligence such as injury to another in golfing, fishing or hunting accident. Notice that I have mentioned personal activities. Your homeowner's policy probably contains a business and professional activity exclusion. This seems to mean that if you are engaged in supervising children on a hiking, swimming, or fishing trip or in the operation of power tools, your homeowner's policy won't protect you. This is a professional activity for you. On the other hand, if you have a volunteer worker who is supervising the children under the same circumstances, it is his avocation, and he will be protected under his homeowner's policy. It is personal to him, but professional to you. Many institutions carry comprehensive general liability insurance coverage to protect their employees for their professional activities outside of the operation of motor vehicles. The University of Missouri carries such a policy and a claim filed against an employee of the University would be covered for any personal injury claim made against him arising out of his professional activities. Even here, the routine comprehensive general liability policy will not cover the kind of psychic injuries resulting from false arrest, false imprisonment, malicious prosecution, libel, slander, defamation or invasion of privacy unless there is a special endorsement sometimes known as a "personal injury offenses" endorsement.

The message is clear. If the institution does not provide you with business and professional comprehensive general liability coverage, you should consider the risk in personally volunteering

to directly supervise activities dangerous to children. Volunteers who you recruit from the community to do the supervising are probably protected by their homeowner's policies.

The question is sometimes posed: Can I have the parents of a child sign a piece of paper which will relieve me from any claim for personal injuries which might be filed by the child? The answer is NO, the parents don't have the right to contract away the child's personal injury claim. Secondly, in most states exculpatory clauses excusing injury claims resulting from negligent behavior are void as against public policy. Obtaining parental consent for youngsters to participate in activities is good practice, but clauses attempting to bar personal injury claims arising out of these activities are a nullity.

At this point, I think it is important to discuss briefly some of the institutional and individual immunities which exist. The federal government has given up some of its governmental immunity and now allows an individual injured by the negligence of a federal employee to sue the government in federal court under the Federal Tort Claims Act. (See Appendix 1) Until about 10 years ago, you had the option of suing the federal employee individually. Currently a federal employee, operating a vehicle in the course of his employment, is immune from suit for negligent behavior arising out of and within the scope of his employment. Other federal employees are still subject to individual suit. In most states the state is still immune from suit and persons injured must sue state employees individually. Some state institutions provide individual protection for their employees and some don't. In Missouri, all governmental units except municipalities engaged in proprietary activities are immune from suit. In some states, charitable institutions are immune and in some states they are not immune. In Missouri, such institutions are subject to suit. Generally speaking, you are far more likely to be sued individually if your employer is immune from suit.

I want to comment somewhat on your management of an accident when it occurs. You should report the accident in writing to every insurance company in sight. Almost all insurance policies are conditioned on you giving prompt written notice of the loss or accident. If you have a question about the severity of a child's head injury, report it. The most frequent unreported dangerous injury is the child head injury where the symptoms of the severity of the injury don't appear for some time.

If you are sued for more than policy limits, you should consult personal counsel.

Bibliography

The Yearbook of School Law 1976, Phillip K. Piele editor, National Organization on Legal Problems of Education, Topeka, Kansas, H.C. Hudgins, Jr. "Tort Liability" pp. 53-76.

The Yearbook of School Law 1975, Phillip K. Piele editor, National Organization on Legal Problems of Education, Topeka, Kansas. H.C. Hudgins, Jr., "Tort Liability" pp. 81-104.

The Yearbook of School Law 1974, Floyd G. Delon editor, National Organization on Legal Problems of Education, Topeka, Kansas, H.C. Hudgins, Jr., "Tort Liability of School Districts, Officers and Employees", pp. 174-202.

The Yearbook of School Law 1973, Robert E. Phay editor, National Organization on Legal Problems of Education, Topeka, Kansas, James M. Linaghan, "Tort Liability of School Districts, Officers and Employees", pp. 164-186.

The Yearbook of School Law 1972, LeRoy J. Peterson editor, National Organization on Legal Problems of Education, Topeka, Kansas, Lawrence W. Knowles, "Tort Liability of School Districts, Officers and Employees", pp. 23-50.

NOLPE Notes, Don Moran editor, National Organization On Legal Problems of Education, Topeka, Kansas, Cumulative Index to NOLPE Notes, Volumes 1-11 Inclusive, January 1977.

"Legal Aspects of 4-H and Other Organized Youth Programs and Activities Workshop", W.W. Eure, Course Coordinator, National 4-H Council, 7100 Connecticut Ave., Washington D.C. 20015. V. Joseph McAuliffe, Director Educational Programs & Services, March 1976.

Respect For Law, American Bar Association, Division of Communications, Special Events Department, 1155 East 60th Street, Chicago, Illinois, 60637.

Youth & The Law, Irving J. Sloan, J.D., Oceana Publications.

Essentials of School Law, Robert L. Drury and Kenneth C. Ray, Appleton-Century-Crofts, New York, "Tort Liability", p. 20-74, 128-135.

School in the Legal Structure, Edward C. Bolmeier, W.H. Anderson Company, Cincinnati, Second edition, "Tort Liability, School District," p. 139.

Education Law, George M. Johnson, Michigan State University Press, East Lansing, 1969, "Tort Liability of Education Agencies and Personnel, p. 122-151.

The Law of Public Education, E. Edmund Reutter and Robert R. Hamilton, Foundation Press, Inc., Miniola, New York, 1970, "Tort Liability", p. 280-286.

Education and the Law, William R. Hazard, Collier-Macmillian Limited, London, "Tort Liability", p. 405-448.

Black's Law Dictionary, Henry Campbell Black, West Publishing Co. St. Paul, Minnesota, 1968, Revised Fourth Edition.

Burns Indiana Statutes Annotated, Harrison Burns (ed.), Indianapolis, Indiana: Bobbs-Merrill Company, Inc. 1970.

"1976 Cumulative Pocket Supplement," Burns Indiana Statutes Annotated, Code Edition, Bobbs-Merrill Company, Indianapolis, Indiana.

Related References

1. Legal Rights of Children - Noah Weinstein, National Council of Juvenile Court Judges.

2. Children's Rights - Adams, Berg, Ollendorff, Neill, Berger, Duane, Praeger Publishers.

3. The Rights of Children - Harvard Educational Review, Reprint series #9.

4. Tax Exempt Status of 4-H Organizations Authorized to Use the 4-H Name and Emblem - Extension Service, USDA Jan. '75.

5. Making Sense Out of the Rights of Youth - WAID - Quarterly Focus, Center for Youth Development & Research, University of Minnesota, Winter 1975.

6. Due Process: A Means to Implement Youth Rights - Bright, Quarterly Focus, Center for Youth Development & Research, University of Minnesota, Spring/Summer 1976.

RECOMMENDATIONS

1. That legal aspects of working with youth be included in all induction and in-service training for professional, paraprofessional and volunteer staff involved with the 4-H programs and activities.

2. That the legal aspects and implications of the law be updated each year for all Extension workers as a part of the inservice training offered during the Annual Extension Workers Conference.

3. That additional follow-up training be offered on an area basis as needed and/or requested.